

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

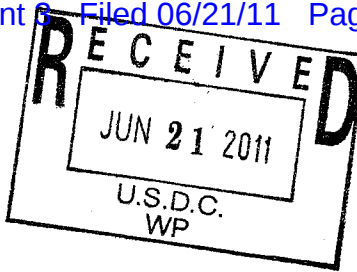
-----X  
CINDY LANZBOM individually and on  
behalf of a class,

Plaintiffs,

v.

PORTFOLIO RECOVERY ASSOCIATES, L.L.C.,

Defendant.  
-----X



**AMENDED**  
**COMPLAINT – CLASS ACTION**  
Docket No. 11-cv-4156 ECF  
(VLB) (LMS)

Plaintiff, by their attorneys, hereby amends the complaint as of right pursuant to Fed.R.Civ.P. 15(a)(1) and hereby alleges upon information and belief as follows:

### **INTRODUCTION**

1. Plaintiff brings this action to secure redress from unlawful credit and collection practices engaged in by defendant Portfolio Recovery Associates L.L.C. Plaintiff alleges violation of the Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. (“FDCPA”).
2. The FDCPA broadly prohibits unfair or unconscionable collection methods; conduct which harasses, oppresses or abuses any debtor; and any false, deceptive or misleading statements, in connection with the collection of a debt; it also requires debt collectors to give debtors certain information. 15 U.S.C. §§1692d, 1692e, 1692f and 1692g.
3. Plaintiff further seeks to vacate judgments procured by Defendant, and disgorge monies collected unlawfully by Defendant, due to Defendant’s failure to file a certificate of publication as required by the New York Limited Liability Company Law.

**JURISDICTION AND VENUE**

4. This Court has jurisdiction under 15 U.S.C. §1692k (FDCPA), 28 U.S.C. §1331 and 28 U.S.C. §1367.

5. Venue under 28 U.S.C. §1391 and personal jurisdiction in this District are proper because:

a. Defendant's collection communications were received by plaintiff within this District;

b. Defendant does business within this District.

6. Plaintiff, Cindy Lanzbom, is an individual who resides in Rockland County, New York.

7. Defendant, Portfolio Recovery Associates, L.L.C., is a limited liability company chartered under Delaware law with offices at 120 Corporate Blvd – Suite 100, Norfolk, VA 23502.

8. Defendant buys defaulted debts from others.

9. As part of their strategy for collecting defaulted debts, Defendant utilizes collection law firms and collection agencies.

10. Defendant pays pennies on the dollar for these defaulted debts and then seeks to collect the full amount, plus interest.

11. Defendant is a debt collector as defined in the FDCPA.

**FACTS**

12. On or about May 19<sup>th</sup>, 2011, a letter was sent addressed to Plaintiff attached as Exhibit A, attempting to collect a debt on behalf of the Defendant.

13. Exhibit A sought to collect a debt incurred for personal, family or household purposes, namely a personal consumer credit card debt.

14. Exhibit A is sent out with the knowledge and consent of Defendant.

15. Documents in the form represented by Exhibit A and other collection material is regularly sent to collect delinquent debts allegedly owed to Defendant.

16. Defendant sued plaintiff on or about January 26<sup>th</sup>, 2010 and obtained a money judgment in amount of \$6,388.94 on or about April 16<sup>th</sup>, 2010. Summons and Complaint of that action attached as Exhibit B.

17. Defendant, a foreign Delaware LLC, filed an application for authority to do business in New York with the New York Department of State on or about July 16th, 1999.

18. Foreign LLC's are required to publish their formation, and file proof of publication of their LLC within 120 days of the filing of their application for authority.

19. At the time of Plaintiff's commencement of the action against Defendant, Defendant has failed to publish, and has failed to file any certificate of publication and/or failed to file any sort of proof or affidavit of publication, as required. Letter from the New York Department of State attached as Exhibit C.

20. Pursuant to the New York Limited Liability Company Law, failure to file the certificate of publication results in suspension of authority to do business in New York State, and a prohibition of bringing any legal proceedings in New York State during the period of noncompliance.

21. At the time of Plaintiff's commencement of the action against Defendant, Defendant's authority to do business had been suspended.

22. During the period of noncompliance, Defendant was prohibited from conducting business in New York State, and prohibited from bringing a legal proceeding in New York State.

23. At the time of the mailing of Exhibit A, Defendant's authority to do business had been suspended.

24. The least sophisticated consumer is unlikely to search and/or to have the ability or knowledge to search Department of State records to determine whether Defendant's authority to do business is suspended, and/or to determine whether Defendant was prohibited from bringing a legal proceeding.

### **VIOLATIONS ALLEGED**

#### **Count I - FDCPA**

25. Exhibit A violates 15 U.S.C. §§1692, 1692e, 1692e(2)(a), 1692e(5) 1692e(10), 1692f.

26. Section 1692e provides:

#### **§ 1692e. False or misleading representations**

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(2) The false representation of—  
(A) the character, amount, or legal status of any debt;

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt....

#### **§ 1692f. Unfair Practices**

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.

27. Defendant violated the above provisions of the statute because they had no right to collect this debt.

28. Defendant's activities in collecting this debt were deceptive, misleading and/or false.

29. Defendant's collection techniques involved asking consumers to pay debts when they had no legal ability to ask for payment.

30. Defendant did not inform the consumer that the debt owed was to Defendant which had no authority to do business in New York and/or that Defendant had no right to collect any money or to sue in New York.

31. Defendant's lawsuit against plaintiff in procuring a money judgment violated the above statute because Defendant's authority to do business in New York was suspended.

32. Any judgment obtained during Defendant's period of noncompliance is a nullity and of no legal force or effect.

**COUNT II-GBL 349**

32. Plaintiff incorporates by reference paragraphs 1 through 31 of this Complaint as though fully stated herein.

33. The conduct of Defendant in collecting and attempting to collect monies owed when it was not allowed to pursuant to the New York Limited Liability Law constitutes deceptive or materially misleading activity that is directed at consumers and the public at large and caused consumers to suffer financial injuries of having increased debt and having money extracted from them.

34. As a result of the unlawful collection activity which the defendant engaged in, plaintiff is entitled to damages pursuant to GBL § 349 of \$6,388.94 which is actual damages.

### **CLASS ALLEGATIONS**

35. Plaintiff brings this class action on behalf of classes pursuant to Fed.R.Civ.P.23(a) and 23(b)(2) and 23(b)(3).

36. The first class consists of (a) all individuals (b) with a New York address (c) who received any collection material from Defendant or Defendant's agent on or after a date 1 year prior to the filing of this action, and until 20 days after the filing of this action.

37. The first class is so numerous that joinder of all members is not practicable. On information and belief, there are at least 40 members of the class.

38. There are questions of law and fact common to the first class, which common questions predominate over any questions relating to individual class members. The predominant common question in the first class, is whether the collection material sent out during the period of Defendant's noncompliance with the publication requirement, violates the FDCPA.

39. The second class consists of (a) all individuals (b) with a U.S. address (c) who had a money judgment entered against them in a court in New York State (d) by Portfolio (e) on or after January 1, 2000 and on or before 20 days after the filing of this action.

40. The second class is so numerous that joinder of all members is not practicable. On information and belief, there are at least 40 members of the class.

41. There are questions of law and fact common to the second class, which common questions predominate over any questions relating to individual class members. The

predominant question in the second class, is whether Defendant's procurement of money judgments, despite its suspension of authority to do business and/or its being prohibited from bringing a legal proceeding, violates the New York Limited Liability Company Law and/or the GBL.

42. Plaintiff's claims are typical of the claims of the class members. All are based on the same factual and legal theories.

43. Plaintiff will fairly and adequately represent the class members. Plaintiff has retained counsel experienced in class actions and FDCPA litigation.

44. A class action is superior for the fair and efficient adjudication of this matter, in that individual actions are not economically feasible.

- a. Members of the classes are likely to be unaware of their rights;
- b. Congress intended class actions to be the principal enforcement mechanism under the FDCPA.

**WHEREFORE**, the Court should enter judgment in favor of Plaintiff and the class and against Defendant for:

- (1) Statutory damages;
- (2) Vacatur of the judgment obtained against Plaintiff;
- (3) Vacatur of each and every judgment obtained against the consumers defined by the second class above;
- (4) Declaratory relief that Defendant engaged in activity that violated the New York Limited Liability Company Law, the FDCPA, and the GBL;

- (5) Disgorgement of any collected monies by Defendant during the time period between January 1, 2000 and until 20 days after the filing of this action;
- (6) Attorney's fees, litigation expenses and costs of suit;
- (7) Such other and further relief as the Court deems proper.

Dated: New York, New York  
June 21<sup>st</sup>, 2011



AARON COHEN, ESQ. (AC0613)  
THE COHEN LAW OFFICE, P.C.  
Attorney for Plaintiff  
300 E. 42<sup>nd</sup> Street, 10<sup>th</sup> Floor  
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Telephone: (212)-813-2000  
[acohen@cohenlawpc.net](mailto:acohen@cohenlawpc.net)

Law Office of Ryan Scott Karben  
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Pomona, New York 10970  
914-536-4402  
[ryan@ryankarben.com](mailto:ryan@ryankarben.com)

Law Offices of Shimshon Wexler,  
P.C.  
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New York, NY 10025  
212-760-2400  
917-512-6132 (fax)  
[swexleresq@gmail.com](mailto:swexleresq@gmail.com)

**DEMAND FOR TRIAL BY JURY**

Plaintiff requests trial by jury on all issues so triable.



Aaron Cohen



# EXHIBIT A

MALEN & ASSOCIATES, p.c.  
Attorneys at Law  
123 Frost Street, Suite 203  
Westbury, New York 11590  
(516) 334-3500  
Ext: 5906

05/19/11

CINDY R LANZBOM  
37 SHERWOOD RIDGE RD  
POMONA NY 10970

516-479-5951  
paul mahler, esq

Re: PORTFOLIO RECOVERY ASSOCIATES, LLC  
and  
CINDY R LANZBOM  
AKA CINDY LANZBOM

File No: 222369 60  
5178057250587651  
Originating Creditor: CAPITAL ONE BANK NA  
Balance Due:\$ 7015.93

Dear CINDY R LANZBOM

**\*\*IF YOU ARE REFINANCING OR SELLING YOUR HOME, THIS LETTER IS NULL & VOID!\*\***

This is to confirm our client's acceptance of a settlement with reference to the above captioned to be paid in ONE LUMP SUM payment.

Your LUMP SUM payment of \$ 4000.00 is expected on or before 05/30/11.

Please make checks payable to Malen & Associates, p.c. and put the file number in the memo section of the check.

A satisfaction of judgment, if applicable, shall be issued once your funds have cleared, provided funds are not from a refinance or sale of real property.

This is an attempt to collect a debt, any information obtained will be used for that purpose. We are Debt Collectors.

Very truly yours,  
Malen & Associates, p.c.

By:  
Ginny Rohde  
Account Representative  
(516) 479-5906

settlement  
ginny

# EXHIBIT B

(Page &lt;HEADER PAGE&gt; of &lt;HEADER COUNT&gt;)



Doc ID: Type: COU  
 Recorded: 01/26/2010  
 Fee Amt: \$210.00 Page 1 of  
 Rockland County, NY  
 Paul Piperato County Clerk

Index No: \_\_\_\_\_  
 Date Filed: \_\_\_\_\_

SU-2010-001031

## CONSUMER CREDIT TRANSACTION

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF ROCKLAND

PORTFOLIO RECOVERY ASSOCIATES, LLC

XXXXXXXXXXXXXXXXXXXX

## SUMMONS AND COMPLAINT

Plaintiff  
 against

The basis of the venue designated is: County in which defendant(s) resides

CINDY R LANZBOM  
 AKA CINDY LANZBOM

Defendant(s)

To the above named Defendant(s)

You are hereby summoned and required to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgement will be taken against you by default for the relief demanded in the complaint.

Dec 21, 2009

Defendant's address:  
 CINDY R LANZBOM  
 37 SHERWOOD RIDGE RD  
 POMONA NY 10970

Doc ID: #020468770001 Type: COU  
 Recorded: 01/26/2010  
 Fee Amt: \$210.00 Page 1 of 1  
 Rockland County, NY  
 Paul Piperato County Clerk

SU-2010-001031

Attorney(s) for Plaintiff  
 Malen & Associates, p.c.  
 123 Frost Street, Suite 203  
 Westbury, NY 11590  
 (516) 334-3500 Ext: 5947  
 NYC License #: 1249728

Paul Mahler, Tim Murtha, Jeffrey Wolstein

The relief sought is: See attached complaint

Upon your failure to appear, judgment will be taken against you by default for the sum of \$ 5792.37 with interest from 12/21/09 and costs and disbursements of this action.

This is an attempt to collect a debt, any information obtained will be used for that purpose.  
 We are a Debt Collector.



UNOFFICIAL COPY

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ROCKLAND  
X  
PORTFOLIO RECOVERY ASSOCIATES, LLC

INDEX #:  
OUR FILE #: 0422K -222369

FILED BH

JAN 26 2010

ROCKLAND COUNTY  
CLERK'S OFFICE

Plaintiff,  
-against-  
CINDY R. LANZBOM  
AKA CINDY LANZBOM

COMPLAINT

Defendant(s)  
X  
Plaintiff's Address:  
140 Corporate Blvd  
Norfolk, VA 23502

PLAINTIFF BY ITS ATTORNEYS, MALEN & ASSOCIATES, P.C. COMPLAINTING OF the Defendant(s).  
allege(s) upon information and belief:

1. Plaintiff is a Corporation licensed to do business in New York.  
CAPITAL ONE (the Assignor) assigned account to PORTFOLIO RECOVERY ASSOCIATES, LLC.  
Plaintiff's New York City Department of Consumer Affairs license number is 1096994.
2. Defendant CINDY R LANZBOM resides or has its principal place of  
business at: 37 SHERWOOD RIDGE RD POMONA NY 10970
3. Upon Information and belief the transaction of business occurred within ROCKLAND County.
4. CAUSE OF ACTION NUMBER ONE:  
Defendant(s) executed an agreement wherein Assignor agreed to extend credit or cash advance on a revolving basis which  
credit or advance was to be paid in monthly installments. There remains due and owing the sum of \$ 5498.18 plus interest of  
\$ 294.19 at the statutory rate of 9.00%, from 05/18/09, for a total of \$792.37.
5. That no portion of the aforementioned sum has been paid, although duly demanded.
6. CAUSE OF ACTION NUMBER TWO:  
Plaintiff repeats each allegation contained in paragraphs 1 through 5, inclusive.
7. Defendant(s) agreed to pay for attorney fees up to the reasonable value of \$ .00.
8. CAUSE OF ACTION NUMBER THREE:  
Plaintiff repeats each allegation contained in paragraphs 1 through 7, inclusive.
9. An account was taken and stated showing a balance of \$ 5792.37 due and owing to Plaintiff by Defendant(s), no part of  
which has been paid, although duly demanded, which Defendant(s) did not object to.

WHEREFORE Plaintiff demands judgment against Defendant(s) in the sum of \$ 5792.37 on the first cause of action; the sum  
of \$ .00 on the second cause of action; the sum of \$ 5792.37 on the third cause of action; together with interest from  
the date of this complaint along with costs and disbursements.

DATED: Dec 21, 2009  
Westbury, New York

Paul Mehler, Tim Murtha, Jeffrey Wolstein

YOUNG, etc.  
MALEN & ASSOCIATES, P.C.  
Attorneys for Plaintiff  
123 Front Street, Suite 203  
Westbury, N.Y. 11590  
(516) 334-3500 Extension: 5947  
NYC License #: 1249723

This is an attempt to collect a debt. Any information obtained will be  
used for that purpose. We are a Debt Collector.

Doc ID: 020448780001 Type: 000  
Recorded: 01/26/2010  
Fee Amt: \$210.00 Page 1 of 1  
Rockland County, NY  
Paul Piperato County Clerk  
SU-2010-001031

# EXHIBIT C



STATE OF NEW YORK  
**DEPARTMENT OF STATE**  
ONE COMMERCE PLAZA  
99 WASHINGTON AVENUE  
ALBANY, NY 12231-0001

ANDREW M. CUOMO  
GOVERNOR

CESAR A. PERALES  
SECRETARY OF STATE

June 14, 2011

Shimshon Wexler  
2710 Broadway, 2<sup>nd</sup> Floor  
New York, NY 10025

Dear Mr. Wexler:

As requested in your recent letter, please be advised as follows in relation to the certificate of publication or affidavit of publication for each entity.

Asset Acceptance, LLC - Certificate of publication 01/04/2007  
Cavalry Portfolio Services, LLC - Affidavits of Publication filed 12/03/2002  
LVNV Funding LLC - Certificate of Publication filed 08/21/2009  
RJM Acquisitions LLC - Affidavits of Publication filed 10/24/2001  
Palisades Collection, LLC - No affidavit or certificate of publication filed  
Midland Funding Corporation - Corporations are not subject to the publication requirement  
Portfolio Recovery Associates, L.L.C. - No affidavit or certificate of publication filed

We hope you find this information helpful.

Sincerely,

Division of Corporations